

42  
180

LEASE AND OPTION AGREEMENT

5304 Boat Club Road  
5309 Lea Crest Lane

Fort Worth, Texas 76135

FILED  
TARRANT COUNTY TEXAS  
09 JUL -9 PM 3:32  
SUZANNE HENDERSON  
COUNTY CLERK

This Lease and Option Agreement (this "Agreement"), made of the 4 day of <sup>July</sup>~~June~~, 2009, by and between the Landlord and the Tenant named below.

ARTICLE 1. - BASIC LEASE TERMS

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

- 1.1 LANDLORD 1525 Berko, LLC, a Texas limited liability company, hereinafter referred to as "Landlord".
- 1.2 TENANT Ikoankar LLC, a Texas limited liability company, hereinafter referred to as "Tenant"
- 1.3 [INTENTIONALLY LEFT BLANK]
- 1.4. LEASED PREMISES The property identified on Exhibit "A" hereto, which such exhibit is fully incorporated herein by reference, in an AS-IS, WHERE-IS and WITH ALL FAULTS, WHETHER PATENT OR LATENT, hereinafter referred to as the "Leased Premises."

1.5 LEASED PERSONAL PROPERTY

\* Tenant shall replace  
the applicable item or  
Landlord may replace  
the applicable item and

All personal property and fixtures which are in the Leased Premises as of the Commencement Date, as well as all such property and fixtures which are acquired and/or placed on the Leased Premises after the Commencement Date and prior to the end of the term of this Lease, including, without limitation, gasoline pumps and tanks (the "Personal Property"). The Personal Property is partially identified on Exhibit "B" hereto, which such exhibit is fully incorporated herein by reference. Tenant agrees to return all Personal Property to Landlord in the same condition as the condition of the Personal Property on the ~~Commencement Date~~ <sup>and casualty damage</sup> subject to reasonable wear and tear. If, upon the termination of this Lease, or at any time during this Lease, any of the Personal Property is not, in Landlord's ~~sole and exclusive discretion~~ <sup>reasonable judgment</sup>, in the said condition as it was on the Commencement Date, then, at Landlord's sole and exclusive option, Tenant shall be obligated to either pay to Landlord the diminished value of such portion of the Personal Property, in which case Landlord shall own the replacement of the personal Property and continue to lease it to Tenant under the terms of this Lease (however, and notwithstanding anything to the contrary herein, the Tenant thereafter will be responsible to keep the new portion of the Personal Property in the same or similar condition, with the

*Langas*

*IS*

*[Signature]*

exception of reasonable wear and tear <sup>and casualty damage).</sup> In all events, the Personal Property is, and shall remain, the property of Landlord and not Tenant.

- 1.6 LEASE TERM Fourteen (14) months and two (2) days beginning on the Commencement Date, hereinafter referred to as the "Lease Term."
- 1.7 COMMENCEMENT DATE The Commencement Date shall be July 1, 2009, hereinafter referred to as the "Commencement Date." The Commencement Date shall constitute the commencement of the Lease Term for all purposes, whether or not Tenant has actually taken possession of the Leased Premises.
- 1.8 BASE RENT "Base Rent, as referred to herein, shall be:  
Two (2) months free of rent, and thereafter Five Thousand and No/100 Dollars (\$5,000.00) per month for twelve (12) months.
- 1.9 SECURITY DEPOSIT Security deposit is Fifty Thousand and No/100 Dollars (\$50,000.00), hereinafter referred to as the "Security Deposit." At such time as the Option in Article 16 hereof is exercised, any and all remaining portions of the Security Deposit shall be converted to a non-refundable down payment on the purchase price under such Option.
- 1.10 ADDRESS LANDLORD: 6300 Ridglea Place, Suite 504  
Fort Worth, Texas 76116  
TENANT: 2699 Fossil Vista Drive # 4204  
Haltom City, Texas 76137; and/or  
15151 FAA Blvd.  
Fort Worth, Texas 76155
- 1.11 PERMITTED USE Operation of a retail convenience store with incidental gas sales, as well as any and all other legal sales and/or business use, hereinafter referred to as the "Permitted Use."
- 1.12 [INTENTIONALLY LEFT BLANK]
- 1.13 [INTENTIONALLY LEFT BLANK]
- 1.14 [INTENTIONALLY LEFT BLANK]
- 1.15 [INTENTIONALLY LEFT BLANK]
- 1.16 GUARANTOR The Guarantors of Tenant's obligations under this Agreement pursuant to a Guaranty of Lease (Exhibit "C" attached hereto and fully incorporated herein by reference) executed for the benefit of Landlord. Said Guarantor is, as of the date of execution hereof: Jagjit Singh Mangat, individually, jointly and severally, and Inderpreet Singh Sidhu,

*J. Mangat*

*Is.*

*[Signature]*

Individually, jointly and severally (hereinafter referred to as the "Guarantor"). Guarantor stipulates that Guarantor is directly benefiting from this Agreement.

1.17 [INTENTIONALLY LEFT BLANK]

## ARTICLE 2. - GRANTING CLAUSE AND RENT PROVISIONS

### 2.1 GRANT OF PREMISES

In consideration of the obligation of Tenant to pay the Base Rent, the Triple Net Payments, and other charges as provided in this Agreement and in consideration of the other terms and provisions of this Agreement, Landlord hereby leases ~~its interest in~~ the Leased Premises to Tenant, as provided herein, during the Lease Term, subject to the terms and provisions of this Agreement.

### 2.2 PAYMENT OF BASE RENT

Tenant agrees to pay monthly as Base Rent during the term of this Agreement the sum of money set forth in Section 1.8 of this Agreement, which amount shall be payable to Landlord at the address shown above or at such other address that Landlord in writing shall notify Tenant. One (1) monthly installment of Base Rent shall be due and payable on the first day of the third month after the Commencement Date of execution of this Agreement by Tenant for the first monthly payment of Base Rent, and a like monthly installment shall be due and payable on or before the first day of each succeeding calendar month until the fourteenth (14<sup>th</sup>) month following the Commencement Date during the term of this Agreement, without demand, offset or deduction; provided, if the Commencement Date should be a date other than the first day of a calendar month, the first monthly installment of Base Rent set forth above shall be prorated to the end of that calendar month, and all succeeding installments of Base Rent shall be payable on or before the first day of each succeeding calendar month during the Lease Term. Tenant shall pay, as additional Rent, all other sums due under this Agreement.

2.3 [INTENTIONALLY LEFT BLANK]

2.4 [INTENTIONALLY LEFT BLANK]

2.5 [INTENTIONALLY LEFT BLANK]

2.6 [INTENTIONALLY LEFT BLANK]

2.7 [INTENTIONALLY LEFT BLANK]

2.8 [INTENTIONALLY LEFT BLANK]

2.9 [INTENTIONALLY LEFT BLANK]



2.10 [INTENTIONALLY LEFT BLANK]

2.11 TAXES

~~placed by Tenant~~  
(a) Tenant shall be liable for all taxes levied against personal property and trade fixtures in the Leased Premises. If any such taxes for which Tenant is liable are levied against Landlord or Landlord's property and if Landlord elects to pay the same, or if the assessed value of Landlord's property is increased by inclusion of personal property and trade fixtures placed by Tenant in the Leased Premises and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand that part of such taxes for which Tenant is primarily liable hereunder.

\*comprising the  
Leased Premises  
during the  
Lease Term.

(b) Except as otherwise provided herein, Landlord will pay in the first instance all real property taxes which may be levied or assessed by any lawful authority against the land and improvements in the Property. \* Tenant shall pay to landlord as additional Rent, upon demand, all of the general taxes attributable to the Leased Premises. The payment to be made by Tenant for the real estate tax year in which this Agreement commences or terminates shall bear the same ratio to the payment which would be required to be made for the full tax year as the number of days of such tax year included within the Lease Term bears to a full tax year. The payment, if any, to be made by Tenant for the tax year in which the rental Commencement Date falls and not for the tax year in which this Agreement terminates shall bear the same ratio to the payment which would be required to be made for the full tax year as the number of Lease months falling within such tax year bears to a full tax year. The initial payment by Tenant of the additional Rent provided for in this Section 2.11 (b) shall be paid to Landlord in one lump sum within ten (10) days after demand therefor by Landlord. Thereafter, any such payment shall be paid by Tenant monthly in amounts equal to <sup>1/12 of</sup> the amount of the prior tax year plus any increases anticipated by Landlord, divided by twelve (12), such payments to be made at the same time as, and in addition to, the payment of Base Rent. In the event that the total monthly payments of additional Rent made by Tenant as provided for in this Section 2.11 (b) for any calendar year, or fractional part thereof, does not equal the total amount of the taxes for such calendar year, or fractional part thereof, then Tenant shall pay to Landlord any such deficiency within ten (10) days after demand therefor by Landlord. In the event that the taxes levied against the Leased Premises are increased as a result of any alterations, additions or improvements made by Tenant to the Leased Premises prior to the assessment date of the prior tax year, Tenant shall pay to Landlord as additional Rent for said tax year and subsequent tax years during the Lease Term the amount of such increase. A tax bill submitted by Landlord to Tenant shall be sufficient evidence of the amount of taxes assessed or levied against the parcel or real property to which such bill relates.

during  
the  
Lease  
Term.

~~accompanied by  
evidence of  
Landlord's payment  
of such taxes.~~

(c) If at any time during the Lease Term, a tax or excise on Rent, or other tax however described (except as inheritance, estate, gift, income

*Shayla* *PS*

*[Signature]*

\* provided that Tenant's proportionate share of any such assessment shall not exceed the product of (x) the amount of such assessment divided by the number of months in the useful life of the applicable improvement, multiplied by (y) the number of months remaining in the Lease Term on the date of such assessment.

2.12 LANDLORD'S INSURANCE

or excess profit tax imposed upon Landlord) is levied or assessed against Landlord by any taxing authority having jurisdiction on account of Landlord's interest in this Agreement or the Base Rent or other charges hereunder, as a substitute in whole or in part for, or in addition to, the taxes described in Section 2.11 (a) or Section 2.11 (b), Tenant shall pay to Landlord as additional Rent upon demand the amount of such tax or excise. In the event that any such tax or excise is levied or assessed directly against Tenant, then Tenant shall pay the same at such times and in such manner as such taxing authority shall require.

(d) In addition to the taxes to be paid by Tenant as described in Section 2.11 (a), (b) and (c) above, Tenant shall also pay to Landlord as additional Rent, upon demand, a proportionate share of any assessments or other governmental charges including, without limitation, any paving assessments, not otherwise described in this Section 2.11 which are paid with respect to the Property during the Lease Term after the Commencement Date. <sup>↑ \*</sup>

(a) Landlord shall cause to be maintained upon the Leased Premises fire and extended coverage for not less than eighty percent (80%) of the full Insurance Value thereof. The term "Full Insurance Value" shall mean the actual replacement cost with respect to buildings and the cost of underground flues, pipes and drains. Landlord, at Landlord's option, shall also cause to be maintained one or more policies of general liability insurance and umbrella insurance insuring Landlord (and such other person or persons designated by Landlord) against, among other things, liability for injury or death to persons and for damage to or destruction of property occasioned by or arising out of or in connection with the use or occupancy of the Leased Premises or any part thereof or by the condition of the Leased Premises or any part thereof, the limitations of such policy or policies ~~being in such amounts as Landlord may determine~~. In addition, Landlord at Landlord's option, may cause to be maintained rental insurance, ~~in such amounts as Landlord may determine~~. Tenant shall pay to landlord, upon demand, and in addition to Rent and other charges prescribed in this Agreement, all of the insurance premiums <sup>for the insurance</sup> attributable to the Leased Premises, including, but not limited to, those specifically identified above. The payment to be made by tenant for the insurance term in which this Agreement commences or terminates shall bear the same ratio to the payment which would be required to be paid for the full insurance term as the number of days of such term of this Agreement bears to the full insurance term. The initial payment by Tenant of the additional Rent provided for in this Section 2.12 shall be paid to Landlord in one lump sum within ten (10) days after demand ~~therefor by Landlord~~. Thereafter, any such additional Rent shall be paid by Tenant monthly in amounts equal to the amount of the prior <sup>year</sup> ~~year~~ <sup>premiums</sup> ~~insurance~~ divided by twelve (12), such payments to be made at the same time as, and in addition to, the payment of Base Rent. In the event that the total monthly payments of additional Rent made by Tenant as provided

evidencing insurance of no more than \$1,000,000.

for no more than 12 months.

evidence of such insurance and payment of the premiums therefor.

*Maquet*

*IS*

\* accompanied by reasonable evidence  
of the deficiency.

~~, but any such direction  
shall be accompanied by  
reasonable evidence of  
the reason therefor.~~

2.13 PAST DUE RENT  
AND ADDITIONAL  
RENT

for in this Section 2.12 for any calendar <sup>the applicable</sup> year, or fractional part thereof, does not equal the total amount of ~~such~~ insurance costs for such calendar year, or fractional part thereof, then Tenant shall pay to Landlord any such deficiency within ten (10) days after demand <sup>therefor</sup> ~~thereof~~ by Landlord. \* If at any time during the Lease Term Landlord has reason to believe that at some time within the immediately succeeding twelve (12) month period Tenant will owe Landlord a payment pursuant to one or more sections of this Article 2, Landlord may direct that Tenant prepay monthly a pro rated portion of the prospective future payment (i.e., the prospective future payment may be divided by the number of months before the prospective future payment will be due). Tenant agrees that any such prepayment directed by Landlord shall be due and payable monthly on the same day that Base Rent is due. Nothing shall prevent Landlord at Landlord's discretion from taking out insurance of the kinds and amounts provided herein under a blanket policy or policies covering other properties as well as the Leased Premises and other insureds as well as Landlord, *so long as the costs thereof do not exceed the costs which would be attributable to policies covering only the Leased Premises. All insurance shall be obtained from competitive parties unrelated to Landlord.* Tenant shall pay to landlord a "Late Charge" for any installment of Base Rent, additional Rent, or other payment specified herein, if such payment is not made within ten (10) days after the due date thereof, to reimburse Landlord for the extra expense involved in handling such delinquent payment. Such Late Charge shall be an amount equal to five percent (5%) of the total of any such past due amount(s). After ten (10) days after the due date thereof, the Late Charge shall continue to accrue at the rate of Ten Dollars (\$10.00) per day until all past due amount(s) are paid in full. Any such Late Charges shall be payable immediately upon demand. Neither the assessment nor the collection by Landlord of any Late Charge provided for herein shall constitute a waiver by Landlord of any of the rights or remedies which Landlord has under this Agreement or under applicable law as a result of Tenant's failure to timely pay any Rent due hereunder. In addition to any Late Charges or other charges imposed hereunder, Tenant shall also pay to Landlord a "Return Check Charge" of \$ 25.00 for each check issued by Tenant to Landlord which is returned unpaid to Landlord by the bank on which such check is drawn including, but not limited to, each check which is returned to Landlord because of insufficient funds on deposit in Tenant's bank account and each check which is returned to landlord because the account upon which such check has been drawn has been closed. Any such Late Charge or Returned Check Charge assessed or collected hereunder shall not be considered interest. Any Late Charge or Return Check Charge, if not paid on demand, may, at Landlord's option, be deducted from the Security Deposit provided in Section 2.14 hereof.

If Tenant fails to timely pay two (2) installments in any twelve (12) month period of Base Rent, additional Rent, or other payment specified herein, or any combination thereof, Landlord may require Tenant to pay

*Signature* *IS* *JB*

(in addition to any Late Charge) Base Rent, or additional Rent, and/or other payments specified herein (as estimated by Landlord, if necessary) quarterly in advance and, in such event, all future payments shall be made on or before the due date in cash or by cashier's check or money order, and the delivery of Tenant's personal or corporate check shall not longer constitute payment thereof. Any amount so estimated by Landlord and paid by Tenant shall be adjusted promptly after actual figures become available and paid or credited to Landlord or Tenant, as the case may be.

2.14 APPLICATION OF  
SECURITY  
DEPOSIT

*\* to whom or which  
Landlord conveys the  
Leased Premises and  
the Personal Property  
specifically subject to  
this Agreement and  
Tenant's right hereunder.*

The Security Deposit shall be held by Landlord for the performance of all of Tenant's covenants and obligations under this Agreement, including, without limitation, Tenant's obligations as respects the Personal Property, it being expressly understood that the Security Deposit shall not be considered an advance payment of Rent or a measure of Landlord's damage in case of default hereunder by Tenant, and shall be held by Landlord without payment of any interest thereon. Upon the occurrence of any event of default by Tenant under this Agreement, Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrears of Rent or any other sum due hereunder, or to repair any damage or injury, or pay any expense of liability incurred by Landlord as a result of the event of default or breach of covenant, including Landlord's attorneys' fees, and, except as provided for to the contrary in Article 16 hereof, any remaining balance of the Security Deposit, without interest, shall be returned by Landlord to Tenant upon the termination of this Agreement. If any portion of the Security Deposit is so used or applied as permitted by this Section 2.14, Tenant shall upon ten (10) days written notice from Landlord, deposit with Landlord by cash or cashier's check an amount sufficient to restore the Security Deposit to its original amount. The Security Deposit may be assigned and transferred by Landlord to any successor in interest of Landlord, and, upon acknowledgment by such successor of receipt of such Security Deposit and its assumption of the obligation to account to Tenant for such Security Deposit in accordance with the terms of this Agreement, Landlord shall thereby be discharged of any further obligation relating thereto without the need for further documentation to evidence same. Notwithstanding anything herein to the contrary, upon Tenant's exercise of the Option granted in Article 16., hereof, any and all remaining portion of the Security Deposit shall be converted from a Security Deposit to a non-refundable down payment on the purchase price of the Property under the Option. \*

2.15 HOLDING OVER

If Tenant does not vacate the Leased Premises upon the expiration or earlier termination of this Agreement, Tenant shall be a month-to-month Tenant ~~at sufferance~~ for the holdover period and all of the terms and provisions of this Agreement shall be applicable during that period,

*[Handwritten signatures]*  
*IS*

except that Tenant shall pay Landlord, in addition to any other sums payable under this Agreement, as Base Rent for the period of such holdover, an amount equal to one hundred and twenty-five percent (125%) of the Base Rent which would have been payable by Tenant had the holdover period been a part of the original Term of this Agreement (without waiver of Landlord's right to recover damages as permitted by law). Upon the expiration or earlier termination of this Agreement, Tenant agrees to vacate and deliver the Leased Premises, and all keys thereto, to Landlord upon delivery to Tenant of notice from Landlord to vacate. The Rent payable during the holdover period shall be payable to Landlord on demand. No holding over by Tenant, whether with or without the consent of Landlord, shall operate to extend the Term of this Agreement. Tenant shall indemnify Landlord against all claims made by any tenant or prospective tenant or any third party against Landlord resulting from delay by Landlord in delivering possession of the Leased Premises to such other tenant or prospective tenant.

### ARTICLE 3. - OCCUPANCY, USE AND OPERATIONS

#### 3.1 USE AND OPERATION OF TENANT'S BUSINESS

Tenant represents and warrants to Landlord that the Leased Premises shall be used and occupied only for the Permitted Use. Tenant shall occupy the Leased Premises, conduct its business and control its agents, employees, invitees and visitors in such a manner as is lawful, reputable and will not create a nuisance to any third party. Tenant shall continuously and in good faith throughout the Lease Term and as long as Tenant is in possession of the Leased Premises conduct and carry on its business in the Leased Premises, ~~under the trade name specified in Section 1.2 hereof (or under such other name approved in advance in writing by Landlord). Tenant shall remain open for business to the general public during the hours of operation set forth in Section 1.17 above.~~ Tenant shall at all times operate its business with a fully stocked inventory and in a first class manner. Tenant shall not conduct any auction or fire or bankruptcy sale in or about the Leased Premises. ~~Tenant shall not use any apparatus or machine which makes undue noise or causes vibration, nor shall Tenant otherwise interfere with, annoy, or disturb any third party or Landlord. Tenant shall neither permit any waste on the Leased Premises nor allow the Leased Premises to be used in any way which would, in the opinion of Landlord, be extra hazardous on account of fire, or which would in any way increase or render void the fire insurance on the Leased Premises.~~ No illegal or pornographic activities shall be conducted on the Leased Premises at any time.

in at least as good  
a manner as  
previously operated  
prior to the date  
of this Agreement.

#### 3.1a CONTINUOUS ~~for the sale of motor fuel products and that such use is not extra-hazardous.~~ OPERATION

Tenant acknowledges that cessation of its business operations in the Leased Premises would harm Landlord. Accordingly, Tenant agrees that it shall not, at any time, vacate or cease its ongoing business operations in the Leased Premises, but shall in good faith continuously throughout

*Sept* *IS* *JB*



during normal business hours

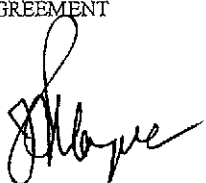
the Lease Term conduct and carry on in the entire Leased Premises with adequate staff and merchandise of the type of business for which the Leased Premises are leased. Tenant agrees that if it should violate or attempt to violate this covenant, notwithstanding that it continues paying Rent and complying with its other obligations hereunder, including financial obligations, Landlord will suffer irreparable injury for which there is no adequate remedy at law. Tenant therefore agrees that Landlord may restrain or enjoin any breach or threatened breach of this covenant and enforce same by specific performance. This covenant is an integral part of this Agreement and one without which this Agreement would not have been entered into.

- 3.2 [INTENTIONALLY LEFT BLANK] *Notwithstanding the foregoing, Tenant shall have the right to close the Leased Premises during non-business hours and to temporarily close the Leased Premises for remodeling, repairs, refurbishment and for restocking.*
- 3.3 COMPLIANCE WITH LAWS, RULES AND REGULATIONS

Tenant, at Tenant's sole cost and expense, shall comply with all laws, ordinances, orders, rules and regulations of state, federal, municipal or other agencies or bodies having jurisdiction over the use, condition or occupancy of the Leased Premises. Tenant shall procure, at its own expense, all permits and licenses required for the transaction of its business in the Leased Premises. Tenant will comply with the rules and regulations of the Leased Premises <sup>reasonably</sup> adopted by Landlord from time to time, including those which are set forth on Exhibit "D" attached to this Agreement, which such exhibit is fully incorporated herein by reference. If Tenant is in any way not complying with any of this Article 3, then, notwithstanding anything to the contrary contained herein, Landlord, may at its election, enter the Leased Premises without liability therefor and fulfill Tenant's obligations. Tenant shall reimburse Landlord on demand for any <sup>reasonable</sup> expenses which Landlord may incur in effecting compliance with Tenant's obligations, including <sup>reasonable</sup> attorneys' fees, and Tenant agrees that Landlord shall not be liable for any damages resulting to Tenant from such action. Landlord shall have the right at all times to change and amend the rules and regulations in any reasonable manner as it may deem advisable for the safety, care, cleanliness, preservation of good order and operation or use of the Leased Premises. All <sup>reasonable</sup> changes and amendments to the rules and regulations of the Leased Premises will be forwarded by Landlord to Tenant in writing and shall thereafter be carried out and observed by Tenant.

- 3.4 WARRANTY OF POSSESSION

Landlord and Tenant each warrants that it has the right and authority to execute this Agreement, and Landlord warrants to Tenant, that upon payment of the required Rents by Tenant and subject to the terms, conditions, covenants and agreements contained in this Agreement, Tenant shall have possession of the Leased Premises during the full Term of this Agreement, as well as any extension or renewal thereof, without hindrance from Landlord or any person or persons lawfully claiming the Leased Premises by, through or under Landlord (but not



Stays  
Shr

otherwise); subject however, <sup>to</sup> ~~to all mortgages, deeds of trust, leases and agreements to which this Agreement is and shall remain subordinate~~ which Landlord has previously or may at any time hereafter enter into ~~and to all laws, ordinances, orders, rules and regulations of any governmental authority.~~ Landlord shall not be responsible for the acts or omissions of any third party that may interfere with Tenant's use and enjoyment of the Leased Premises. Tenant shall execute subordination agreements consistent with the foregoing at all times, and from time to time, that Landlord may request of and present to Tenant on the forms as prescribed by Landlord, *provided that all such subordination agreements* expressly shall acknowledge Tenant's right under this Agreement (including the right to purchase the Leased Premises) following any foreclosure or other enforcement of the applicable instrument. Landlord or its authorized agents shall at any and all reasonable times have the right to enter the Leased Premises to inspect the same, to show the Leased Premises to prospective mortgagees, purchasers or prospective tenants, ~~and to alter, improve or repair the Leased Premises.~~ Tenant hereby waives any claim for abatement or reduction of Rent or for any damages for injury or inconvenience to or interference with Tenant's business, for any loss of occupancy or use of the Leased Premises, and for any other loss occasioned thereby. \*Tenant shall not change Landlord's lock system or in any other manner prohibit Landlord from entering the Leased Premises. Landlord shall have the right at all times to enter the Leased Premises by any means in the event of an emergency without liability to Tenant therefor.

expressly shall acknowledge Tenant's right under this Agreement (including the right to purchase the Leased Premises) following any foreclosure or other enforcement of the applicable instrument.  
3.5 INSPECTION  
\*, provided that the foregoing does not release Landlord from any damage to the Leased Premises, the Personal Property or any property of Tenant arising or resulting from such entry by Landlord or Landlord's authorized agents.

3.6 [INTENTIONALLY LEFT BLANK]

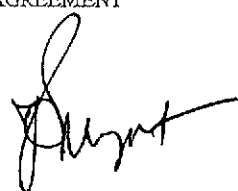

3.7 [INTENTIONALLY LEFT BLANK]

3.8 GARBAGE All garbage and refuse shall be kept by Tenant in an area designated by Landlord and in the kind of container specified by Landlord and shall be placed by Tenant outside of the Leased Premises with such frequency as specified by Landlord, prepared for collection in the manner and at the times and places specified by Landlord. If Landlord provides or designates a service for collection of refuse and garbage, Tenant shall use it, at Tenant's expense, *provided that such service must be furnished at competitive rates.*

ARTICLE 4. - UTILITIES AND SERVICE

4.1 UTILITY SERVICES Landlord shall provide or cause to be provided the mains, conduits and other facilities necessary to supply water, gas, electricity, telephone service and sewage service to the Leased Premises. Tenant shall, however, be responsible, at its expense, to make provisions for connecting or hooking up to such utilities, directly with the appropriate utility company furnishing same at Tenant's expense.

4.2 TENANT RESPONSIBLE FOR CHARGES Tenant shall promptly pay all charges and deposits for electricity, water, gas, telephone service and sewage service and other utilities furnished to

 IS 

the Leased Premises. Landlord may, if it so elects, furnish one or more utility services to Tenant. In such event, Tenant shall purchase the use of such services as are tendered by Landlord which shall not materially exceed the rates which would be charged for the same services if furnished to Tenant directly by the local public utility furnishing the same to the public at large. Landlord may at any time discontinue furnishing any such service without obligation to Tenant other than to connect the Leased Premises to the public utility, if any, furnishing such service.

4.3 ~~LANDLORD'S SERVICES~~ [INTENTIONALLY LEFT BLANK]

~~Landlord may, in its sole discretion, provide additional services not enumerated herein, which Tenant shall promptly pay Landlord for upon demand.~~

4.4 NO LIABILITY

Landlord shall not be liable for any interruption whatsoever in utility services not furnished by it, nor for interruptions in utility service furnished by it, if any, which are interrupted due to fire, accident, strikes, acts of God, riot, civil commotion, terrorist act, national emergency, shortages of labor or materials or any other causes beyond the exclusive control of Landlord or which interruptions are in order for alterations, repairs or improvements to be made to any of the Leased Premises or to any property contiguous thereto or any property utilized by Tenant or Landlord in connection with the Leased Premises. Moreover, Landlord shall not be liable for any interruption of such utility services which continues during any reasonable period necessary to restore such service upon the occurrence of any of the foregoing conditions. Failure by Landlord to any extent to provide any services of Landlord specified herein or any other services not specified, or any cessation thereof, shall not render Landlord liable in any respect for damages to either person or property, be construed as an eviction of Tenant, work an abatement of Rent or any other charges hereunder or relieve Tenant from fulfillment of any covenant in this Agreement. If any of the equipment or machinery necessary or useful for provision of any utility services, and for which Landlord is responsible, breaks down, or for any cause ceases to function properly, Landlord shall use reasonable diligence to repair the same promptly, but Tenant shall have no claim for rebate of Rent or any other charges hereunder or damages on account of any interruption in service occasioned from the repairs.



4.5 THEFT OR BURGLARY

Landlord shall not be liable to Tenant for losses to Tenant's property or personal injury caused by criminal acts or entry by anyone other than Landlord and Landlord's employees, agents, contractors and others for whom Landlord is responsible.

ARTICLE 5. - REPAIRS AND MAINTENANCE

5.1 LANDLORD REPAIRS

Landlord, except as it elects, in its sole and absolute discretion, shall not

 IS 

be required to make any improvements, replacements or repairs of any kind or character to the Leased Premises during the Lease Term. Landlord shall not be liable to Tenant for any damage or inconvenience, and Tenant shall not be entitled to any damages nor to any abatement or reduction of Rent or any other changes hereunder by reason of any repairs, alterations or additions made by ~~Landlord or~~ Tenant under this Agreement.

5.2 TENANT REPAIRS

Tenant, at its own cost and expense, shall maintain the Leased Premises in its current condition. <sup>reasonable wear-and-tear and casualty damage excepted.</sup> Without limiting the generality of the foregoing, Tenant shall maintain ~~and keep in good repair~~ (including replacement when necessary); (a) the interior of the Leased Premises, including walls, floors and ceilings, and shall keep same free of insects and rodents; (b) all windows and doors, including frames, glass, molding and hardware; (c) all wires and plumbing which serve the Leased Premises; (d) all signs, air conditioning and heating equipment, mechanical doors and other mechanical equipment situated on or in the Leased Premises or serving the Leased Premises; (e) the roof, foundation, and parking area of the Leased Premises. Tenant shall also be solely responsible for meeting and maintaining the Leased Premises in accordance with the standards set forth by the Americans With Disabilities Act ("ADA"), as amended. Tenant is hereby notified of the ADA and matters related thereto by and through Exhibit "E" to this Agreement, which such exhibit is fully incorporated herein by reference. Tenant shall further make all other repairs to the Leased Premises made necessary by Tenant's failure to comply with any of its obligations under this Agreement. All fixtures installed by Tenant shall be new.

5.3 [INTENTIONALLY LEFT BLANK]

5.4 TENANT DAMAGES

and  
casualty  
damage

Tenant shall not allow any damage to be committed on any portion of the Leased Premises, and at the termination of this Agreement, by lapse of time or otherwise, Tenant shall deliver the Leased Premises to Landlord in as good condition as existed at the Commencement Date, ordinary wear and tear excepted. The cost and expense of any repairs necessary to restore ~~the condition of~~ the Leased Premises shall be borne by Tenant.

<sup>to the required condition</sup>

ARTICLE 6. - ALTERATIONS AND IMPROVEMENTS

6.1 CONSTRUCTION

Except as expressly provided in this Agreement, Tenant acknowledges and agrees that Landlord has not undertaken to perform any modification, alteration or improvements to the Leased Premises, and Tenant further waives any defects in the Leased Premises and acknowledges and accepts (1) the Leased Premises as suitable for the purpose for which they are leased; and (2) the Leased Premises and every part and appurtenance thereof as being in good and satisfactory condition. ~~Upon the request of Landlord, Tenant shall deliver to Landlord a completed acceptance of Premises memorandum in Landlord's prescribed form.~~



IS



6.2 TENANT  
IMPROVEMENTS

provided that Tenant shall not be required to remove any alteration/addition which was approved by Landlord in writing.

Tenant shall not make or allow to be ~~make~~ <sup>made</sup> any ~~alterations~~ <sup>material</sup>, physical additions or improvements in or to the Leased Premises without first obtaining the written consent of Landlord, which consent ~~may be~~ <sup>shall not be</sup> unreasonably withheld or conditioned. Any alterations, physical additions, or improvements to the Leased Premises made by or installed by either party hereto shall remain upon and be surrendered with the Leased Premises and become the property of Landlord upon the expiration or earlier termination of this Agreement without credit to Tenant; provided, however, Landlord, at its option, may require Tenant to remove any physical improvements or additions and/or repair any alterations in order to restore the Leased Premises to the condition existing at the Commencement Date, all cost of removal and/or alterations to be borne by Tenant. This clause shall not apply to easily removable equipment, furniture or trade fixtures owned by Tenant, which may be removed by Tenant at the end of the Lease Term if: (1) Tenant is not then in default and if such equipment, furniture, or trade fixtures are not then subject to any other rights, liens, and/or interests of Landlord; and (2) the removal of such does not damage the Leased Premises. Tenant shall promptly cause any such liens to be released by payment, bonding, or otherwise within thirty (30) days after request by Landlord, and shall indemnify Landlord against losses arising out of any such claims (including, without limitation, legal fees and court costs).

6.3 ~~COMMON AND~~  
~~SERVICE AREA~~  
~~ALTERATIONS~~

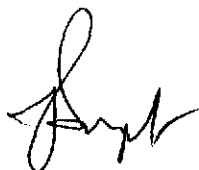
[INTENTIONALLY LEFT BLANK]

~~Landlord shall have the right to decorate and to make repairs, alterations, additions, changes or improvements, whether structural or otherwise, in, about and on the exterior of the Leased Premises, or any part thereof, and to change, alter, relocate, remove or replace service areas, to place, inspect, repair and replace in the Leased Premises (below floors, above ceilings or next to columns) utility lines, pipes and the like to serve other areas of the Leased Premises and to otherwise alter or modify the Leased Premises, and for such purposes to enter upon the Leased Premises and, during the continuance of any such work to take such measures for safety or for the expediting of such work as may be required, in Landlord's sole and exclusive judgment, all without affecting any of Tenant's obligations hereunder.~~

ARTICLE 7 - CASUALTY AND INSURANCE

7.1 SUBSTANTIAL  
DESTRUCTION

If in the determination of Landlord the Leased Premises should be totally destroyed by fire or other casualty, or if in the determination of Landlord the Leased Premises should be damaged so that rebuilding cannot reasonably be completed substantially within ninety (90) working days after Landlord's receipt of written notification by Tenant of the destruction, or if the Leased Premises are damaged or destroyed by



IS



\* , but, in such event, Tenant shall have the right to exercise the option to purchase the Leased Premises described in Article 16 and if Tenant elects to purchase the Leased Premises, Tenant shall be entitled to receive all insurance proceeds payable as a result of such casualty. Landlord will provide Tenant with information regarding the amount of any insurance proceeds payable as a result of such casualty upon Tenant's request.

casualty not covered by the standard broad form of fire and extended coverage insurance then in common use in the State of Texas, then ~~at Landlord's sole and exclusive option~~, this Agreement shall terminate, and, in such case, the Rent shall be abated for the unexpired portion of the Lease Term, effective as of the date of the written notification.\*

## 7.2 PARTIAL DESTRUCTION

If following damage or destruction to the Leased Premises by fire or other casualty, this Agreement is not terminated pursuant to Section 7.1 hereof, this Agreement shall not terminate, and Landlord shall proceed ~~to the extent of insurance proceeds actually received by Landlord after the exercise by any mortgagee of the Leased Premises of an option to apply proceeds against Landlord's debt to such mortgagee,~~ with reasonable diligence to rebuild or repair the Leased Premises or other improvements to substantially the same conditions in which they existed prior to the damage. If the Leased Premises are to be rebuilt or repaired and are untenantable in whole or in part following the damage, and ~~the damage or destruction was not caused or contributed to by act or negligence of Tenant, its agents, employees, invitees or those for whom Tenant is responsible,~~ the Base Rent and additional amounts payable under this Agreement during the period for which the Leased Premises are untenantable shall be reduced to an amount determined by multiplying the Base Rent and additional amounts that would otherwise be payable but for this provision by the ratio that the portion of the Leased Premises not rendered untenantable bears to the total net rentable area of the Leased Premises prior to the casualty. ~~Landlord's obligation to rebuild or restore under this Section shall be limited to restoring the Leased Premises suitable for Tenant's use.~~ If Landlord fails to substantially complete the necessary repairs or rebuilding within one hundred and eighty (180) working days from the date of Landlord's receipt of written notification by Tenant of the destruction, Tenant may at its option terminate this Agreement by delivering written notice of termination to Landlord, whereupon all rights and obligations under this Agreement shall cease to exist.\*

## 7.3 PROPERTY INSURANCE

Except as  
otherwise  
provided herein,

Landlord shall at all times during the Lease Term insure the <sup>Leased Premises</sup> ~~Property~~ against all risk of direct physical loss in an amount and with such deductibles as Landlord considers appropriate; provided, Landlord shall not be obligated in any way or manner to insure any personal property (including, but not limited to, any furniture, machinery, goods or supplies) of Tenant upon or within the Leased Premises, any fixtures installed or paid for by Tenant upon or within the Leased Premises, or any improvements which Tenant may construct on the Leased Premises. Tenant shall have no right in or claim to the proceeds of any policy of insurance maintained by Landlord even if the cost of such insurance is borne by Tenant as set forth in Article 2. In the event that any act of Tenant should cause Landlord's insurance premium to increase or be cancelled, Tenant will immediately pay to reinsure Landlord (if

cancelled) or to reimburse any increase. ~~Landlord shall have the right to self insure against the above described risk.~~ Tenant, at all times during the term of this Agreement shall, at its own expense, keep in full force and effect, insurance against fire and such other risks as are from time to time included in standard all-risk insurance (including coverage against vandalism and malicious mischief) for the full insurance value of Tenant's trade fixtures, furniture, supplies and all items of personal property of Tenant located on or within the Leased Premises.

7.4 WAIVER OF  
SUBROGATION

Anything in this Agreement to the contrary notwithstanding, Landlord and Tenant hereby waive and release each other of and from any and all rights of recovery, claim, action or cause of action, against each other, their agents, officers and employees, for any loss or damage that may occur to the Leased Premises, or personal property within the Leased Premises, by reason of fire or the elements, regardless of cause or origin, including negligence of Landlord or Tenant and their agents, officers and employees. Landlord and Tenant agree immediately to give their respective insurance companies which have issued policies of insurance covering all risk of direct physical loss, written notice of the terms of the mutual waivers contained in this Section, and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of the mutual waivers.

7.5 HOLD HARMLESS

Landlord shall not be liable to Tenant or to Tenant's customers, employees, agents, guests or invitees, or to any other person whatsoever, for any injury to persons or damage to property on or about the Leased Premises, including but not limited to, consequential damage for any reason, including, without limitation: (1) caused by any act or omission of Tenant, its employees, subtenants, licensees and concessionaires or of any other person entering the Leased Premises by express or implied invitation of Tenant; (2) arising out of the use of the Leased Premises by Tenant, its employees, subtenants, licensees, concessionaires or invitees; (3) arising out of any breach or default by Tenant in the performance of its obligations hereunder; (4) caused by the improvements located in the Leased Premises becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or by broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Leased Premises; or (5) arising out of the failure or cessation of any service provided by Landlord (including security service or devices), and Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from any liability, loss, expense or claim (including, but not limited to reasonable attorneys' fees) arising out of such damage or injury. Nor shall landlord be liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of any other persons whatsoever, excepting only duly authorized agents of Landlord acting within the scope of their authority. ~~Further, Tenant specifically agrees to be responsible for and indemnify and hold Landlord harmless from any and all damages or expenses of whatever kind arising out of or~~

Stays  
in

Shapt

IS

OK

Skys  
in

~~caused by a burglary, theft, vandalism, malicious mischief or other  
illegal acts performed in, at, or from the Leased Premises.~~

7.6 LIABILITY  
INSURANCE

promptly after

Tenant, at all times on the Leased Premises during the Lease Term, shall at its own expense, keep in full force and effect comprehensive general liability insurance with "personal injury" coverage and contractual liability coverage, with minimum limits of \$1,000,000.00 on account of bodily injuries to, or death of, one or more than one person as the result of any one accident or occurrence and \$500,000.00 on account of damage to property. Tenant shall also carry insurance against fire and such other risks as are from time to time included in standard all-risk insurance (including coverage against vandalism and malicious mischief) for the full insurance value of Tenant's merchandise, trade fixtures, furnishings, wall covering, carpeting, drapes, equipment and all items of personal property of Tenant located on or in the Leased Premises. Landlord shall be a named additional insured on said policy. All insurance policies or duly executed certificates for the same required to be carried by Tenant under this Agreement, together with satisfactory evidence of the payment of the premium thereof, shall be deposited with Landlord ~~on~~ the date Tenant first occupies the Leased Premises and upon renewals of such policies not less than fifteen (15) days prior to the expiration of the term of such coverage. All insurance required to be carried by Tenant under this Agreement shall be in form and content, and written by insurers acceptable to Landlord, in its <sup>reasonable</sup> discretion. If Tenant shall fail to comply with any of the requirements contained relating to insurance, Landlord may obtain such insurance and Tenant shall pay to Landlord, on demand as additional Rent hereunder, the premium cost thereof. PROOF OF INSURANCE MUST BE PROVIDED TO THE LANDLORD PRIOR TO TENANT'S OCCUPANCY OF THE PREMISES.

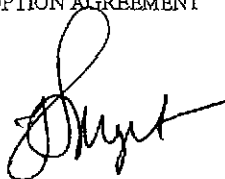
LEASED

7.7 BOILER AND OTHER  
INSURANCE

At all times when a "boiler," as that term is defined for the purposes of boiler insurance, or other specially required safety equipment necessary for the use of hazardous materials is located within the Leased Premises, Tenant shall carry, at its expense, boiler and such other insurance with policy limits of not less than \$100,000.00 insuring both Landlord and Tenant against loss or liability caused by the operation or malfunction of such boiler or equipment.

7.8 HAZARDOUS  
MATERIAL

(1) As used in this Agreement, "Hazardous Material(s)" shall mean any hazardous, toxic or radioactive substance, material, matter or waste which is or becomes regulated by any federal, state or local law ordinance, order, rule, regulation, code or any other governmental restriction or requirement, and shall include asbestos, petroleum products and the terms "hazardous substance" and "hazardous waste" as defined in the Comprehensive Environmental Response, Compensation and



IS

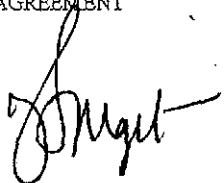




Liability Act (CERCLA), as amended, 42 U.S.C. 9601, et seq., and/or the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6901, et seq., and shall also include all substances, matters, materials, waste, or pollutant, the generation, storage, disposal, handling, release (or threatened release), treatment, discharge, or emission of which is regulated prohibited, or limited under: (i) CERCLA and/or RCRA; (ii) the Clean Water Act, as now or hereafter amended ("CWA") (33 U.S.C. Sections 1251 et seq.); (iii) the Toxic Substances and Control Act, as now or hereafter amended ("TSCA") (15 U.S.C. Sections 2601 et seq.); (iv) the Clean Air Act, as now or hereafter amended ("CAA") (42 U.S.C. Sections 7401 et seq.), (RCRA, CERCLA, CWA, TSCA and CAA are collectively referred to herein as the "Federal Toxic Waste Laws"); (v) any local, state or foreign law, statute, regulation or ordinance analogous to any of the Federal Toxic Waste Laws; and (vi) any other federal, state, local, or foreign law (including any common law), statute, regulation, or ordinance regulating, prohibiting, or otherwise restricting the placement, discharge, release, threatened release, generation, treatment, or disposal upon or into any environmental media of any substance, pollutant, or waste which is now or hereafter classified or considered to be hazardous or toxic. All of the laws, statutes, regulations and ordinances together with the Federal Toxic Waste Laws are collectively referred to herein as "Toxic Waste Laws." The term "Hazardous Material(s)" shall also include, without limitation, (a) gasoline, diesel fuel, fuel oil, motor oil, waste oil, and any other petroleum hydrocarbons, including any additives or other by-products associated therewith, (b) asbestos and asbestos-containing materials in any form, (c) polychlorinated biphenyls, and (d) any substance the presence of which on the Leased Premises: (x) requires reporting or remediation under any of the Toxic Waste Laws; (y) causes or threatens to cause a nuisance on the Leased Premises or poses or threatens to pose a hazard to the health or safety of person on the Leased Premises; or (z) which, if it emanated or migrated from the Leased Premises, could constitute a trespass, nuisance or health or safety hazard to persons on adjacent property.

\*Landlord acknowledges that motor fuel products will be stored and sold at the Leased Premises and Landlord agrees that such use does not violate the provisions of this Section 7.8 so long as Tenant complies with all Toxic Waste Laws in connection therewith.

(2) Tenant shall not cause or permit any Hazardous Material to be brought, kept or used in or about the Leased Premises by Tenant, its agents, employees, contractors or invitees, without the prior written consent of Landlord (which Landlord shall not unreasonably withhold as long as Tenant demonstrates to Landlord's reasonable satisfaction that such Hazardous Material is necessary or useful to Tenant's business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Material so brought upon or used or kept in or about the Leased Premises). \*Tenant shall, at its sole cost and expense, comply with all applicable Toxic Waste Laws including compliance with applicable Toxic Waste Laws in respect of Hazardous Materials located in, on, or under the Leased Premises on or after the Commencement Date (the "Conditions"). Tenant shall promptly provide Landlord with copies of all written communications, permits, reports,

 IS





required by  
applicable  
governmental  
authorities

Agreement, Tenant shall, at Tenant's expense, immediately upon (i) receipt of notice of violation from Landlord or any governmental authority; or (ii) Tenant's discovery or receipt of actual notice of such violation, take any and all remedial, removal, or other actions ~~necessary~~ to correct the violation. If Tenant breaches the foregoing obligations stated in the preceding sentence, or if the presence of Hazardous Material on the Leased Premises caused or permitted by Tenant results in contamination of the Leased Premises, or if contamination of the Leased Premises by Hazardous Material otherwise occurs for which Tenant is liable to Landlord under this Agreement or under any other applicable law for damage resulting therefrom, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Leased Premises, damages for the loss or restriction use of rentable or usable space or if any amenity of the Leased Premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorney's fees, consultant fees and expert fees) which arise during or after the Lease Term as a result of such contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Leased Premises and attorney's fees. Without limiting the foregoing, if the presence of any Hazardous Material on the Leased Premises caused or permitted by Tenant results in any contamination of the Leased Premises, Tenant shall promptly take all actions at its expense as are necessary to ~~return the Leased Premises to the condition existing prior to the~~ ~~introduction of any such Hazardous Material to the Leased Premises;~~ ~~provided that Landlord's approval of such actions shall be first obtained.~~ remediate such contamination to the extent required by all governmental authorities.

in the event of an  
emergency which  
threatens the safety  
of life or property

(3) Landlord shall have the right, but not the obligation, prior or subsequent to any event of default under this Section 7.8, without in any way limiting Landlord's other rights and remedies under this Agreement, to enter onto the Leased Premises or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or a violation of Toxic Waste Laws at the Leased Premises. ~~All~~ reasonable costs and expenses paid or incurred by Landlord in the exercise of any such rights as otherwise specified herein, including in the performance of any of Tenant's duties or obligations hereunder, shall be payable by Tenant within thirty (30) days after demand.

\* If Tenant is the cause of the existence of such Hazardous Materials or violation of  
ARTICLE 8. - CONDEMNATION Toxic Waste Laws, all

#### 8.1 SUBSTANTIAL TAKING

If in the opinion of Landlord, all or a substantial part of the Leased Premises is taken for any public or quasi-public use under any

*Signature* IS

*Signature*

\* , but, in such event, Tenant shall have the right to exercise the option to purchase the Leased Premises described in Article 16 and if Tenant elects to purchase the Leased Premises. Tenant shall be entitled to receive all condemnation proceeds payable as a result of such condemnation. Landlord will provide Tenant with information regarding the amount of any condemnation proceeds payable as a result of such condemnation upon Tenant's request.

governmental law, ordinance or regulation, or by right of eminent domain or by purchase in lieu thereof, and ~~in the opinion of Landlord~~ the taking would prevent or materially interfere with the use of the Leased Premises for the purpose for which it is then being used, this Agreement shall, ~~at the option of Landlord,~~ terminate and the Rent shall be abated during the unexpired portion of this Agreement effective on the date physical possession is taken by the condemning authority. \*

8.2 PARTIAL TAKING

~~If less than a substantial~~  
~~in the opinion of Landlord~~ a portion of the Leased Premises shall be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain or by purchase in lieu thereof, and this Agreement is not terminated as provided in Section 8.1 above, Landlord shall restore and reconstruct, ~~to the extent of condemnation proceeds (excluding any proceeds for land) actually received after the exercise by any mortgagee of the Leased Premises of an option to apply such proceeds against Landlord's debt to such mortgagee,~~ the Leased Premises to the extent necessary to make it reasonably tenantable. The Base Rent payable under this Agreement during the unexpired portion or Term shall be reduced to an amount determined by multiplying the Base Rent that would otherwise be payable but for this provision by the ratio that the portion of the Leased Premises not rendered untenable bears to the total net rentable area of the Leased Premises prior to the ~~condemnation~~. If Landlord fails to substantially complete such restoration and reconstruction within ninety (90) working days of the date of physical possession by the condemning authority, Tenant may at its option, terminate this Agreement by delivering written notice of termination to Landlord, whereupon all rights and obligations of this Agreement shall cease to exist. \*

8.3 CONDEMNATION PROCEEDS

~~Except as otherwise provided herein, all~~  
All compensation awarded for any taking (or the proceeds of private sale in lieu thereof), whether for the whole or a part of the Leased Premises, shall in all events be the sole property of Landlord (whether such award is compensation for damages to Landlord's or for any of Tenant's interest in the Leased Premises, including, but not limited to, Tenant's leasehold estate), and Tenant hereby irrevocably assigns all of its interest in any such award to Landlord; provided, however, Landlord shall have no interest in any award made to Tenant for loss of business if a separate award for Tenant's loss of business is made to Tenant and specifically identified in the award. \*

ARTICLE 9. - ASSIGNMENT OR SUBLEASE

9.1 TENANT

ASSIGNMENT Tenant shall not assign, in whole or in part, this Agreement, or allow it to be assigned, in whole or in part, by operation of law or otherwise (including, without limitation, by merger, dissolution, or transfer of a controlling interest in any partnership or corporate tenant, which merger,

\*\* If a condemnation of a portion of the Leased Premises is completed before the exercise by Tenant of Tenant's right to purchase the Leased Premises under the provisions of Article 16 hereof and if Tenant elects to purchase the remainder of the Leased Premises, the price to be paid by Tenant for the remainder of the Leased Premises shall be reduced by the amount of condemnation proceeds paid to Landlord.

*[Handwritten signature]*

IS

*[Handwritten signature]*

shall not be  
unreasonably  
withheld

dissolution, or transfer shall be deemed an assignment) or mortgage or pledge the same, or sublet the Leased Premises, in whole or in part, without the prior written consent of Landlord, which ~~such consent~~. ~~Landlord may withhold, in its sole and exclusive discretion, and in no event shall nay such assignment or sublease ever release Tenant or any guarantor from any obligation or liability hereunder. No assignee or sublessee of the Leased Premises or any portion thereof may assign or sublet the Leased Premises or any portion thereof.~~

9.2 CONDITIONS OF  
TENANT

ASSIGNMENT If Tenant desires to assign or sublet all or any part of the Leased premises, it shall

so notify Landlord in writing at lease thirty (30) days in advance of the date on which Tenant desires to make such assignment or sublease. Tenant shall provide Landlord with a copy of the proposed assignment or sublease and such information as Landlord might request concerning the specific proposed sublessee or assignee to allow Landlord to make informed judgments as to the financial condition, reputation, operations and general desirability of the proposed sublessee or assignee. Within fifteen (15) days after Landlord's receipt of Tenant's proposed assignment or sublease and all required information concerning the proposed sublessee or assignee, Landlord shall have the following options: (1) consent to the specific proposed assignment or sublease

may not be  
unreasonably  
withheld

(which consent Landlord may withhold, in its sole and exclusive discretion), and, if the Rent due and payable by any assignee or sublessee under any such permitted assignment or sublease (or a combination of the Rent payable under such assignment or sublease plus any bonus or any other consideration or any payment incident thereto) exceeds the Rent payable under this Agreement for such space, Tenant shall pay to Landlord all such excess Rent and other excess consideration within ten

(10) days following receipt thereof by Tenant; or (2) ~~refuse, in its sole and absolute discretion and judgment, to consent to the proposed assignment or sublease, which refusal shall be deemed to have been exercised as opposed to the foregoing option (1) and (2) unless Landlord gives Tenant written notice stating otherwise within the time period prescribed.~~

In the event Landlord consents to any assignment, such assignee will then become liable to Landlord (along with any claims Landlord may have against the original Tenant) for all sums due whether accruing before or after such assignment. Upon the occurrence of an event of default by Tenant under this Agreement, if all or any part of the Leased Premises are then assigned or sublet, Landlord, in addition to any other remedies provided by this Agreement or provided by law, may, at its option, collect directly from the assignee or sublessee all Rents becoming due to Tenant by reason of the assignment or sublease, and Landlord shall have a security interest in all properties belonging to Tenant on the Leased Premises to secure payment to such sums. Landlord shall be authorized to file all such Financing Statements as Landlord may elect and/or file this Agreement to perfect such security interest in all such filing offices as Landlord may determine to be

if it is  
reasonable  
to do so,

Stays  
In

Suppl

Is

AB

\* Leased Premises, but only if such subordination is expressly subject to the recognition of Tenant's rights under this Lease (including under Article 16 hereof) after any foreclosure or other enforcement of such mortgage or deed of trust.

necessary or appropriate. No collection directly by Landlord from the assignee or sublessee shall be construed to constitute a novation or a release of Tenant or any Guarantor from the further performance of its obligations under this Agreement. All <sup>reasonable</sup> legal fees and expenses incurred by Landlord in connection with the review by Landlord of Tenant's requested assignment or sublease pursuant to this Section 9.2, together with any legal fees and disbursements incurred in the preparation and/or review of any documentation, shall be the responsibility of Tenant and shall be paid by Tenant within five (5) days of demand for payment thereof, as Rent hereunder. If the Rent due and payable by assignee or sublessee under any such permitted assignment or sublease (or a combination of the Rent payable under such assignment or sublease plus any bonus or any other consideration or any payment incident thereto) exceeds the Rent payable under the Agreement for such space, Tenant shall pay to Landlord all such excess Rent and other excess consideration within ten (10) days following receipt thereof by Tenant.

9.3 LANDLORD  
ASSIGNMENT

so long as the assignee expressly agrees to recognize Tenant's rights under this Agreement (including Tenant's right to purchase the Leased Premises). (but not before)

Landlord shall have the right to sell, transfer or assign, ~~in whole or in part~~, its rights and obligations under this Agreement and in the Leased Premises. Provided the successor assumes Landlord's obligations under this Agreement, any such sale, transfer or assignment shall operate to release Landlord from any and all liabilities under this Agreement arising after the date of such sale, assignment or transfer without the necessity or requirement for Tenant to execute any other documents or instruments to evidence same, although Tenant shall, at Landlord's request, execute any and all such documents and instruments as Landlord may request of Tenant, ~~on the forms prescribed to Tenant by Landlord~~, <sup>reasonably</sup>

9.4 RIGHTS OF  
MORTGAGEE

Leased Premises.

Tenant accepts this Agreement subject and subordinate to any recorded ~~lease, mortgage or deed of trust~~ <sup>exists in</sup> presently existing, if any, or hereafter encumbering the Property and to all existing ordinances and recorded, restrictions, covenants, easements, and agreements with respect to the ~~Property~~. Landlord is hereby irrevocably vested with full power and authority to subordinate Tenant's interest under this Agreement to any mortgage or deed of trust lien now or hereafter placed on the ~~Property~~ <sup>Property</sup>. Upon any foreclosure, judicially or non-judicially, of any such mortgage, or the sale of the Property in lieu of foreclosure, or any other transfer of Landlord's interest in the Property, whether or not in connection with a mortgage, Tenant does, and hereafter agrees to attorn to, the purchaser at such foreclosure sale or to the grantee under any deed in lieu of foreclosure or to any other transferee of Landlord's interest, and shall recognize such purchaser, grantee, or other transferee as Landlord under this Agreement, and no further attornment to and recognition of such purchaser or grantee as Landlord hereunder. <sup>[shall be necessary.]</sup> Such agreement of Tenant to attorn shall survive any such foreclosure sale, trustee's sale, conveyance in lieu thereof, or any other transfer of Landlord's interest in the ~~Property~~. Tenant, upon demand, at any time,

Int

IS

PS

\* on a commercially reasonable form which must provide for the recognition of Tenant's rights under this Agreement (including Tenant's right to purchase the Leased Premises) after any foreclosure or other enforcement of the applicable mortgage or deed of trust.

before or after any such foreclosure sale, trustee's sale, conveyance in lieu thereof, or other transfer shall execute, acknowledge, and deliver to the prospective transferee and/or mortgagee a lease subordination, not-disturbance and attornment agreement in a form reasonable to Landlord, in title and interest in the property sold. The proceeds of the sale of such property shall be applied by Landlord toward the reasonable costs and expenses of the sale, including attorney's fees, and then toward the payment of all sums then due by Tenant to Landlord under the terms of this Agreement. Any excess remaining shall be paid to Tenant or any other person entitled thereto by law.

10.2 UNIFORM  
COMMERCIAL  
CODE

This Agreement is intended as and constitutes a security agreement within the meaning of the Texas Business and Commerce Code. Landlord, in addition to the rights prescribed in this Agreement, shall have all of the rights, titles, liens, and interest in and to Tenant's property, now or hereafter located upon the Leased Premises, which may be granted a secured party, (as that term is defined in the Texas Business and Commerce Code) under this Agreement. Tenant consents to Landlord filing a financing statement (or continuation statement) for the purpose of perfecting Landlord's security interest under this Agreement or Landlord may file this Agreement, a carbon, photographic or other reproduction of this Agreement, or a memorandum of this Agreement in Landlord's prescribed form.

ARTICLE 11. - DEFAULT AND REMEDIES

and such failure  
continues for five  
days following the  
delivery of written notice of  
non-payment to Tenant;

11.1 DEFAULT BY  
TENANT

unless such lien is  
being contested by  
Tenant and Tenant  
bonds such lien  
within 15 days after  
being requested to  
do so by Landlord;

unless such failure is due to  
casualty damage or other  
event not within the  
reasonable control of Tenant;

The following shall be deemed to be events of default by Tenant under this Agreement: (1) Tenant shall fail to pay when due any installment of Rent or any other payment required pursuant to this Agreement; (2) Tenant shall abandon any substantial portion of the Leased Premises; (3) Tenant or any Guarantor shall file a petition or be adjudged bankrupt or insolvent under any applicable federal or state bankruptcy or insolvency law or admit that it cannot meet its financial obligations as they become due, or a receiver or trustee shall be appointed for all or substantially all of the assets of Tenant or any Guarantor; (4) Tenant or any Guarantor shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors; (5) Tenant shall do or permit to be done any act which results in a lien being filed against the Leased Premises of the Property; (6) the liquidation, termination, dissolution or the death of Tenant; (7) Tenant fails during hours of operation to continuously conduct and carry on in good faith the type of business for which the Leased Premises are leased for a period of fifteen (15) consecutive business days; (8) Tenant fails to open for business within five (5) calendar days after the Commencement Date of this Agreement; or (9) Tenant shall be in default of any other term, provision or covenant of this Agreement. With respect to item (9) only, Tenant shall have thirty (30)

ten (10)  
business

IS

\* , provided that if such default cannot be reasonably cured within a thirty (30) day period, Tenant shall not be in default so long as Tenant commences action to cure such default within the original thirty (30) day period and thereafter pursues cure of such default to completion.

days to cure such default of any other term, provision, or covenant of this Agreement after receipt of a notice of default from Landlord, after which time, absent cure, such default of any other term, provision, or covenant of this Agreement shall be deemed to be an event of default by Tenant under this Agreement. \*

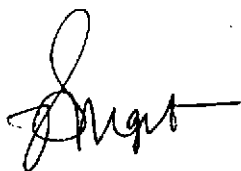
11.2 REMEDIES FOR  
TENANT'S  
DEFAULT

Upon the occurrence of any event of default set forth in this Agreement, Landlord shall have the option to pursue any one or more of the remedies set forth in this Section 11.2 without any additional notice or demand.

(1) Without declaring the Agreement terminated, Landlord may enter upon and take possession of the Leased Premises, by picking or changing locks if necessary, and lock out, expel or remove Tenant and any other person who may be occupying all or any part of the Leased Premises without being liable for any claim for damages, and may attempt to relet the Leased Premises on behalf of Tenant and receive the rent directly by reason of the reletting. Tenant agrees to pay Landlord on demand any deficiency or cost that may arise by reason of changing the locks or any reletting of the Leased Premises; further, Tenant agrees to reimburse Landlord for any <sup>reasonable</sup> expenditures made by it in order to relet the Leased Premises, including, but not limited to, remodeling and repair costs and commissions paid.

(2) Without declaring the Agreement terminated, Landlord may enter upon the leased Premises, by picking or changing locks if necessary without being liable for any claim for damages, and do whatever Tenant is obligated to do under the terms of this Agreement. Tenant agrees to reimburse Landlord on demand for <sup>reasonable</sup> any expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Agreement; further, Tenant agrees that Landlord shall not be liable for any damages resulting to Tenant from effecting compliance with Tenant's obligations under this Agreement caused by the negligence of Landlord or otherwise.

(3) Landlord may terminate this Agreement, in which event Tenant shall immediately surrender the Leased Premises to Landlord, and if Tenant fails to surrender the Leased Premises, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in Rent, enter upon and take possession of the Leased Premises, by picking or changing locks if necessary, and lock out, expel or remove Tenant and any other person who may be liable for any claim of damages. Tenant agrees to pay on demand the amount of all loss and damage which Landlord may suffer for any reason due to the termination of this Agreement under this Section 11.2, including (without



TS





limitation) loss and damage due to the failure of Tenant to maintain and/or repair the Leased Premises as required hereunder and/or due to the inability of Landlord to relet the Leased Premises on satisfactory terms or otherwise.

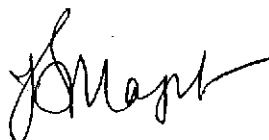

~~(4) Landlord shall have the option, in addition to and not in limitation of any other remedy permitted by law or by this Agreement, of declaring the entire amount of Rent for the remainder of the Lease Term due and payable immediately, without terminating this Agreement, as liquidated and agreed damages for the payment of costs and expenses that Landlord will incur in regaining possession, restoring or reletting the Leased Premises. It is understood and agreed that the actual determination of Landlord's costs and expenses is not feasible and that the amount of Rent for the remainder of the Lease Term represents a reasonable estimate of such cost.~~

Landlord's re-entry of the Leased Premises shall in no way constitute a waiver of any default by Tenant, or of Landlord's rights to pursue and/or all such defaults.

Landlord's exercise, following a default by Tenant under this Agreement, of any right granted hereunder or under any applicable law to lock out or change the locks securing the Leased Premises shall not impose upon Landlord any duty to notify Tenant of the name and address or telephone number of the individual or company from whom a new key may be obtained, nor shall Landlord have any duty to provide Tenant with a new key or any other means of access to the Leased Premises, unless otherwise required by law. Landlord and Tenant agree that the parties hereto intend that all rights and remedies of landlord under this Agreement or otherwise available to Landlord under applicable law shall supersede any conflicting provisions of the Texas Property Code, and any amendments, modification, recodification or other changes thereto.

Notwithstanding any other remedy set forth in this Agreement, if Landlord has made Rent or other concessions of any type or character including but not limited to exclusivity, the right of early termination, or waiving of any Base Rent, and Tenant fails to take possession of the Leased Premises on the Commencement Date or otherwise defaults at any time during the Term of this Agreement, the Rent or other concessions including any waived Base Rent, shall be canceled and Tenant shall no longer have the rights granted by the concession, and in the case of a Rent concession, the amount of the Base Rent or other Rent concessions shall be due and payable immediately as if no Rent concessions or waiver of any Base Rent had ever been granted.

A Rent concession or waiver of the Base Rent shall not relieve Tenant of any obligation to pay any other charge due and payable under this agreement. Notwithstanding anything contained in this Agreement to the

 IS 

contrary, this Agreement may be terminated by Landlord only by written notice of such termination to Tenant given in accordance with Section 14.6 and no other act or omission of Landlord shall be construed as a termination of this Agreement.

11.3 REMEDIES  
CUMULATIVE

All rights and remedies of Landlord herein or existing at law or in equity are cumulative and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other.

11.4 DEFAULT BY  
LANDLORD

If Landlord defaults in the performance of any term, covenant or condition required to be performed by Landlord under this Agreement, Landlord shall have thirty (30) days following the receipt of written notice from Tenant specifying such default to cure such default, provided that if Landlord has commenced actions to cure default within said thirty (30) day period, Landlord shall have all reasonable and necessary time to complete such cure *so long as Landlord diligently pursues such cure.*

11.5 REMEDIES FOR  
LANDLORD'S  
DEFAULT

Upon the occurrence of any default set forth in this Agreement and subsequent failure by Landlord to cure or commence actions to cure as provided in Section 11.4, Tenant shall, <sup>as</sup> ~~at~~ Tenant's sole and exclusive remedy, have the right to maintain an action against Landlord, limited only for actual damages suffered as a result of Landlord's default.

11.6 NOTICES TO  
MORTGAGEES

Provided that Tenant has received prior written notice of the name and address of such lender, Tenant shall serve written notice of any claimed default or breach by Landlord under this Agreement upon any lender which is a beneficiary under any deed of trust or mortgage against the Leased Premises, and no notice to Landlord shall be effective against Landlord unless such notice is served upon said Lender; notwithstanding anything to the contrary contained herein, Tenant shall allow such lender the same period following lender's receipt of such notice to cure such default or breach as is afforded Landlord.

ARTICLE 12.

[INTENTIONALLY LEFT BLANK]

ARTICLE 13. - ADDITIONAL DEFINITIONS



13.1 ABANDON

"Abandon" means the vacating of all or a substantial portion of the Leased Premises by Tenant, whether or not Tenant is in default of the rental or other payments due under this Agreement.

13.2 ACT OF GOD OR

LEASE AND OPTION AGREEMENT

PAGE 26

 IS 

FORCE MAJEURE

An "Act of God" or "Force Majeure" is defined for purposes of this Agreement as strikes, lockouts, sitdowns, material or labor restrictions by any governmental authority, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire storms, weather (including wet grounds or inclement weather which prevents construction), acts of the public enemy, wars, insurrections, and/or any other cause not reasonably within the control of Landlord or which by the exercise of due diligence Landlord is unable to wholly or in part, to prevent or overcome.

ARTICLE 14. - MISCELLANEOUS

14.1 WAIVER

Failure of Landlord to declare an event of default immediately upon its occurrence, or delay in taking any action in connection with an event of default, shall not constitute a waiver of the default, but Landlord shall have the right to declare the default at any time and take such action as is lawful or authorized under this Agreement. Pursuit of any one or more of the remedies set forth in Article 11 above shall not preclude pursuit of any one or more of the other remedies provided elsewhere in this Agreement or provided by law, nor shall pursuit of any remedy hereunder or at law constitute forfeiture or waiver of any Rent or damages accruing to Landlord by reason of the violation of any of the terms, provisions, or covenants of this Agreement. Failure by Landlord to enforce one or more of the remedies provided hereunder or at law upon any event of default shall not be deemed or construed to constitute a waiver of the default or of any other violation of or breach of any of the terms, provisions, or covenants contained in this Agreement. Landlord may collect and receive Rent due from Tenant without waiving or affecting any rights or remedies that Landlord may have at law or in equity or by virtue of this Agreement at the time of such payment. Institution of a forcible detainer action to re-enter the Leased Premises shall not be construed to be an election by Landlord to terminate this Agreement. Notwithstanding anything to the contrary herein, no waiver by Landlord of any breach by Tenant hereunder shall be effective unless such waive is in writing and executed by a duly authorized representative of Landlord. No waiver by Landlord of any breach by Tenant hereunder shall operate as a waiver of a subsequent breach by Tenant hereunder.

14.2 ACT OF GOD

Landlord shall not be required to perform any covenant or obligation in this Agreement, or be liable in damages to Tenant, so long as the performance or non-performance of the covenant or obligation is delayed, caused or prevented by an Act of God, Force Majeure or by Tenant.

14.3 ATTORNEY'S FEES

If <sup>either party</sup> ~~Tenant~~ defaults in the performance of any of the terms, covenants, agreements or conditions contained in this Agreement and ~~Landlord~~ <sup>the other party</sup> places in the hands of any attorney the enforcement of all or any part of this Agreement, the collection of any Rent or other sums due or to become due or recovery of possession of the Leased Premises, ~~Tenant~~ <sup>the non-prevailing party</sup> agrees to pay Landlord's costs of collection, including, without limitation, reasonable attorney's fees, ~~whether suit is actually filed or~~

*the non-prevailing party  
agrees to pay the  
prevailing party's*

*[Signature]*

*IS*

*[Signature]*

~~not.~~

14.4 SUCCESSORS

This Agreement shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, personal representatives, permitted successors, and/or permitted assigns.

14.5 INTERPRETATION

The captions appearing in this Agreement are convenience only and in no way define, limit, construe or describe the scope or intent of any Section. Grammatical changes required to make the provisions of this Agreement apply (1) in the plural sense where there is more than one tenant; and (2) to either corporations, associations, partnerships or individuals, males or females, shall in all instances be assumed as though in each case fully expressed. The laws of the State of Texas shall govern the validity, performance and enforcement of this Agreement. All claims or controversies arising under or related to this Agreement shall be determined in the state and/or federal courts of Tarrant County, Texas. Landlord and Tenant mutually acknowledge that each of them has reviewed this Agreement in its entirety and that the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation or application of this Agreement and/or the interpretation or application of any amendment(s) hereto, if any.

14.6 NOTICES



All Rent and other payments required to be made by Tenant shall be payable to Landlord at Landlord's address set forth on page 1. All payments required to be made by Landlord to Tenant shall be payable at Tenant's address set forth on page 1. Any notice or document (other than Rent) required or permitted to be delivered by the terms of this Agreement shall be deemed to be delivered (whether or not actually received) either when hand delivered or when deposited in the United States Mail, postage prepaid, certified mail, return receipt ~~required~~ *requested*, addressed to the parties at the respective addresses set forth on page 1 (or in case of Tenant, at the Leased Premises), or to such other addresses as the parties may have designated by written notice to each other, with copies of notices to Landlord being sent to Landlord's address as shown on page 1.

14.7 SUBMISSION OF  
LEASE

SUBMISSION OF THIS AGREEMENT TO TENANT FOR SIGNATURE DOES NOT CONSTITUTE A RESERVATION OF SPACE OR ANY OPTION TO LEASE. THIS AGREEMENT IS NOT EFFECTIVE UNTIL EXECUTION BY AND DELIVERY TO BOTH LANDLORD AND TENANT.

14.8 CORPORATE  
AUTHORITY

If Tenant executes this Agreement as a corporation or a partnership (general or limited), each person executing this Agreement on behalf of Tenant hereby personally represents and warrants that Tenant is a duly authorized and existing corporation or partnership (general or limited), Tenant is qualified to do business in the state in which the Leased

 IS 

Premises are located, the corporation or partnership (general or limited) has full right and authority to enter into this Agreement, each person signing on behalf of the corporation or partnership (general or limited) is authorized to do so and to bind Tenant to this Agreement, and the execution and delivery of the Agreement by Tenant will not result in any breach of, or constitute a default under any mortgage, deed of trust, lease, loan, credit agreement, partnership agreement, or other contract or instrument to which Tenant is a party or by which Tenant may be bound. If any representation or warranty contained in this Section is false, each person who executes this Agreement shall be liable, individually, as Tenant hereunder, and shall further be liable for all damages suffered by Landlord as a result of such false representation and/or warranty, inclusive of attorneys' fees in any manner incurred in relation thereto.

14.9 MULTIPLE  
TENANTS

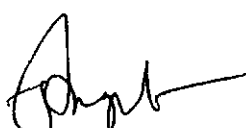

If this Agreement is executed by more than one person or entity as "Tenant", each such person or entity shall be jointly and severally liable hereunder. It is expressly understood that any one of the named Tenants shall be empowered to execute any modification, amendment, exhibit, floor plan, or other document herein referred to and bind all of the named Tenants thereto; and Landlord shall be entitled to rely on same to the extent as if all of the named Tenants has executed same.

14.10 TENANT'S FINANCIAL  
STATEMENTS

Tenant represents and warrants to Landlord that, as of the date of execution of this Agreement by Tenant, the financial statement of Tenant provided to Landlord prior to or simultaneously with the execution of this Agreement accurately represents the financial condition of Tenant as of the dates and for the periods indicated therein, such financial statements are true and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements included therein not misleading and there has been no material adverse change in the financial condition or business prospects of Tenant since the respective dates of such financial statements. If there is a material adverse change in Tenant's financial condition, Tenant will give immediate notice of such material adverse change to Landlord. If Tenant fails to give such immediate notice to Landlord, such failure shall be deemed an event of default under this Agreement.

14.11 SEVERABILITY

If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. Each covenant and agreement contained in this Agreement shall be construed to be a separate and independent covenant and agreement, and the breach of any such covenant or agreement by Landlord shall not discharge or relieve Tenant from Tenant's obligation to perform each and every covenant and agreement of this Agreement to be performed by Tenant.

 IS 

14.12 LANDLORD'S  
LIABILITY

[INTENTIONALLY LEFT BLANK]

stays  
in

~~If Landlord shall be in default under this Agreement and, if as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the right, title and interest of Landlord in the Leased Premises as the same may then be encumbered, and Landlord shall not be liable for any deficiency. In no event shall Tenant have the right to levy execution against any property of Landlord other than its interest in the Leased Premises as herein expressly provided.~~

in which the assignee expressly agrees to recognize Tenant's rights under this Agreement (including Tenant's rights under Article 16),

14.13 SALE OF  
PROPERTY

Upon any conveyance, sale or exchange of the Leased Premises or assignment of this Agreement, Landlord shall be and is hereby entirely free and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Agreement arising out of any act, occurrence or omission relating to the Leased Premises or this Agreement occurring after the consummation of such sale or exchange and assignment.

↑ (but not before)

14.14 TIME IS OF THE  
ESSENCE

The time of the performance of all of the covenants, conditions and agreements of this Agreement is of the essence of this Agreement.

14.15 SUBTENANCIES

At Landlord's option, the voluntary or other surrender of this Agreement by Tenant, or a mutual cancellation thereof, shall not work a merger of estates and shall operate as an assignment of any or all permitted subleases or subtenancies.

14.16 [INTENTIONALLY LEFT BLANK]

14.17 QUIET ENJOYMENT

So long as Tenant is not in default, Landlord shall not interfere with Tenant's possession and quiet enjoyment of the Premises.

14.18 NON-DISCLOSURE  
OF LEASE TERMS

Tenant's accountant or other professionals representing Tenant

Tenant shall not disclose any of the material terms and/or provisions of this Agreement to any current or prospective Tenant or any person or entity not a party to this Agreement except Tenant's attorney. Disclosure of any term or provision of this Agreement to any such party shall constitute an immediate event of default under the Agreement, which event of default shall not be subject to cure.

14.19 REGULATIONS,  
ORDINANCES

All terms and conditions of this Agreement are subject to all rules, regulations, restrictions or applicable codes and ordinances as are currently in effect or as may be hereafter imposed by any municipalities or governmental agencies. Tenant also understands that it is responsible

Emgt

IS

B

for compliance with the Americans With Disabilities Act (ADA) within the Leased Premises.

#### ARTICLE 15. - AMENDMENT AND LIMITATION OF WARRANTIES

15.1 ENTIRE AGREEMENT

IT IS EXPRESSLY AGREED BY TENANT, AS A MATERIAL CONSIDERATION FOR THE EXECUTION OF THIS AGREEMENT, THAT THIS AGREEMENT, WITH THE SPECIFIC REFERENCES TO EXTRINSIC DOCUMENTS, IS THE ENTIRE AGREEMENT OF THE PARTIES; THAT THERE ARE, AND WERE, NO VERBAL REPRESENTATIONS, WARRANTIES, UNDERSTANDINGS, STIPULATIONS, AGREEMENTS OR PROMISES PERTAINING TO THE SUBJECT MATTER OF THIS AGREEMENT OR OF ANY EXPRESSLY MENTIONED EXTRINSIC DOCUMENTS THAT ARE NOT INCORPORATED IN WRITING IN THIS AGREEMENT OR IN SUCH DOCUMENTS.

15.2 AMENDMENT

THIS AGREEMENT MAY NOT BE ALTERED, WAIVED, AMENDED OR EXTENDED EXCEPT BY AN INSTRUMENT IN WRITING SIGNED BY LANDLORD AND TENANT, AND GUARANTOR SHALL CONTINUE TO BE LIABLE UNDER THIS AGREEMENT AS AMENDED EVEN THOUGH GUARANTOR MAY NOT HAVE EXECUTED OR HAVE NOTICE OF SUCH AMENDMENT.

15.3 LIMITATION OF WARRANTIES

LANDLORD AND TENANT EXPRESSLY AGREE THAT THERE ARE AND SHALL BE NO IMPLIED WARRANTIES AS TO THE LEASED PREMISES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OF ANY OTHER KIND ARISING OUT OF THIS AGREEMENT, AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, IF ANY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TENANT EXPRESSLY ACKNOWLEDGES THAT LANDLORD HAS MADE NO WARRANTIES OR REPRESENTATIONS CONCERNING ANY HAZARDOUS MATERIALS OR OTHER ENVIRONMENTAL MATTERS AFFECTING ANY PART OF THE PROPERTY, AND LANDLORD HEREBY EXPRESSLY DISCLAIMS AND TENANT WAIVES ANY EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO SUCH MATTERS.

15.4 WAIVER AND RELEASES

TENANT SHALL NOT UNDER ANY CIRCUMSTANCES HAVE THE RIGHT TO WITHHOLD OR TO OFFSET RENT OR TO

TERMINATE THIS AGREEMENT EXCEPT AS EXPRESSLY PROVIDED HEREIN. TENANT WAIVES AND RELEASES ANY AND ALL STATUTORY LIENS AND OFFSET RIGHTS.

#### ARTICLE 16. - PURCHASE OPTION

- 16.1 GRANT OF OPTION For and in consideration of the payment by Tenant to Landlord of Ten and No/100 Dollars (\$10.00) (the "Option Price") at the time of execution of this Agreement, Landlord does hereby grant and assign unto Tenant an exclusive and irrevocable option (the "Option") to purchase the Leased Premises AS-IS, WHERE-IS and WITH ALL FAULTS, ~~sixty (60)~~ <sup>thirty (30)</sup> days prior to the ~~expiration~~ <sup>termination</sup> of the Lease Term, and the closing of which such purchase shall take place contemporaneously with the termination of the Lease Term (the "Closing").
- 16.2 EXERCISE OF OPTION Tenant may exercise the Option at the time provided by Section 16.1 by delivering written notice of such election to Landlord of the exercise of the Option or by executing the Option Exercise immediately below Tenant's signature on this Lease. If Tenant exercises the Option, he shall execute the Real Estate Purchase Agreement attached hereto as Exhibit "F" and incorporated herein by reference (the "Purchase Agreement") at the time of the exercise. If Tenant exercises the Option and fails to timely execute the Purchase Agreement or to consummate the Closing, Landlord may, as damages for such failure by Tenant, retain the Security Deposit.
- 16.3 DISPOSITION OF THE OPTION PRICE The Option Price is non-refundable, and Landlord shall be entitled to retain the Option Price as consideration for the granting of the Option regardless of whether Tenant exercises the Option, and the Option Price shall not be credited against the Purchase Price (hereinafter defined).
- 16.4 PURCHASE PRICE OF THE LEASED PREMISES The purchase price for the Leased Premises (the "Purchase Price") shall be \$750,000.00 as provided by the Real Estate Purchase Agreement attached hereto as Exhibit "F" (the "Real Estate Agreement"), which such current funds shall include the then balance, if any, of the Security Deposit, the balance of which shall be retained by Landlord and applied to the Purchase Price at the Closing without the necessity of any further action by Landlord or Tenant. The purchase of the Leased Premises shall be subject to the terms and conditions of the Real Estate Agreement, which such Real Estate Agreement shall be executed at the time of the exercise of the Option.
- 16.5 DOCUMENTATION Both Landlord and Tenant agree to execute and deliver to the other or to the title company that is involved in the closing of the sale of the Leased



Premises such further documents as may be reasonably necessary or convenient to effectuate the transaction contemplated by this Article 16, including, without limitation, closing statements and evidence of the authority of persons executing this Agreement and/or other documents to effectuate the transaction contemplated by this Article 16.

*See Rider*

The following exhibits are attached hereto and made a <sup>part</sup>~~part~~ hereof:

Exhibit A - Legal Description

Exhibit B - Personal Property

Exhibit C - Guaranty

Exhibit D - Rules & Regulations

Exhibit E - Notice Regarding: Americans With Disabilities Act

Exhibit F - Real Estate Purchase Agreement

Exhibit G - Memorandum of Contract <sup>July</sup>~~June~~

EXECUTED by Tenant on the 4<sup>th</sup> day of ~~June~~<sup>July</sup>, 2009, and Landlord on the 4<sup>th</sup> day of ~~June~~<sup>July</sup>, 2009, to be effective as of the first day written herein.

LANDLORD

1525 Berko, LLC, a Texas limited liability company

By: 

Jerry Berkowitz, its Sole Manager

TENANT

By: 

Jagjit Singh Mangat, Individually and Jointly

By: 

Inderpreet Singh ~~Sidhu~~<sup>Sidhu</sup>, Individually and Jointly

OPTION EXERCISE:

By: 

Jagjit Singh Mangat, Individually and Jointly

By: 

Inderpreet Singh ~~Sidhu~~<sup>Sidhu</sup>, Individually and Jointly

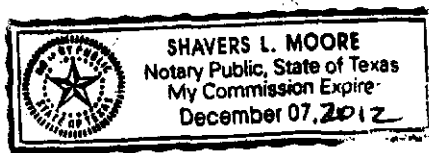
LEASE AND OPTION AGREEMENT

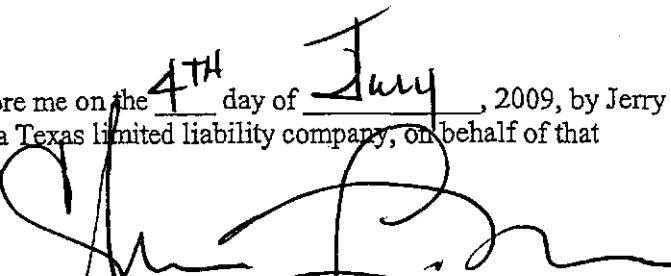
PAGE 33



STATE OF TEXAS           §  
                                  §  
COUNTY OF TARRANT   §

This instrument was acknowledged before me on the 4<sup>TH</sup> day of July, 2009, by Jerry Berkowitz, Sole Manager of 1525 Berko, LLC, a Texas limited liability company, on behalf of that company.

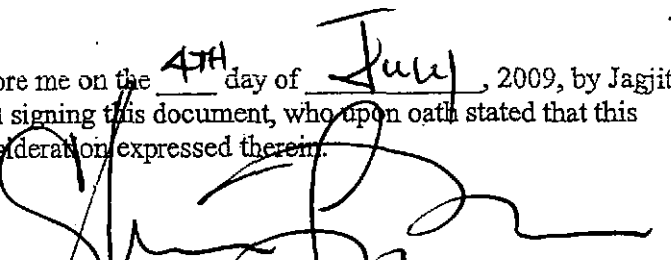


  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS           §  
                                  §  
COUNTY OF TARRANT   §

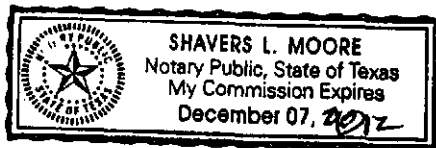
This instrument was acknowledged before me on the 4<sup>TH</sup> day of July, 2009, by Jagjit Singh Mangat, known to me to be the individual signing this document, who upon oath stated that this instrument was signed for the purposes and consideration expressed therein.

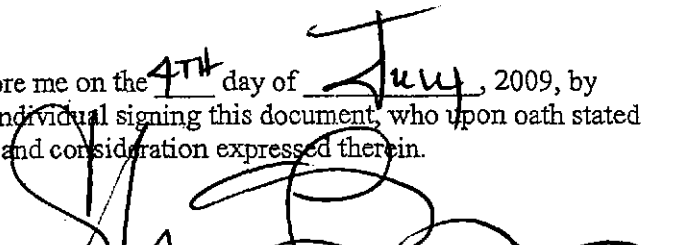


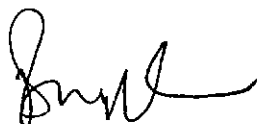
  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

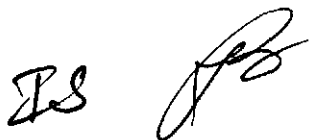
STATE OF TEXAS           §  
                                  §  
COUNTY OF TARRANT   §

This instrument <sup>S.dhu</sup> was acknowledged before me on the 4<sup>TH</sup> day of July, 2009, by Inderpreet Singh ~~Singh~~, known to me to be the individual signing this document, who upon oath stated that this instrument was signed for the purposes and consideration expressed therein.



  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS





**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

All of Lot 11-R, Block 1, composed of and including Lot 11-R1 and Lot 11-R2, Block 1, ..  
Greenfield Acres Addition out of the William Dean and William Dosheir Surveys in Tarrant  
County, Texas, according to the plat recorded in Volume 388-17, Page 665, Plat Records of  
Tarrant County, Texas, commonly known as 5304 Boat Club Road, Fort Worth, Texas 76135  
and 5309 Lea Crest Lane, Fort Worth, Texas 76135.

EXHIBIT "A" TO LEASE AND OPTION AGREEMENT

*[Signature]*

IS.

*[Signature]*

## EXHIBIT "B"

### PERSONAL PROPERTY

1. Equipment. All of <sup>Landlord's</sup> ~~Tenant's~~ equipment, machinery, apparatus, motor vehicles, fittings, furniture, furnishings, fixtures, parts, accessories, and all replacements and substitutions <sup>thereof</sup> ~~thereof~~ or accessions thereto, and all other property of the same class, without limitation, whether now owned or hereafter acquired and wheresoever located ("Equipment"); Equipment includes but is not limited to the following: all heating, plumbing, refrigeration, lighting fixtures, cooking utensils and cookware, counters, interior and exterior signs, inventory, office furniture, appliances, gas tanks, gas pumps, gas lines, any and all other improvements and fixtures now, or hereafter, attached to or used in connection with, and all buildings and all improvements now or hereafter placed upon the Leased Premises.



## EXHIBIT "C"

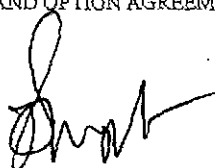

### GUARANTY

In order to induce 1525 Berko, LLC ("Landlord"), to execute the foregoing Lease and Option Agreement (the "Agreement") with Ikoankar LLC, a Texas limited liability company (the "Tenant"), the undersigned (whether one or more than one) has guaranteed and by this instrument does hereby guarantee the payment and performance of all liabilities, obligations, and duties (including, but not limited to, payment of Rent and other charges, both during the primary Lease Term, and any extension or renewal periods thereof) imposed upon Tenant under the terms of the Agreement (and any amendment thereto), as if the undersigned has executed the Agreement as Tenant thereunder. If this Guaranty is executed by more than one individual or entity, all such undersigned shall be jointly and severally liable hereunder.

The undersigned hereby waives notice of acceptance of this Guaranty and all other notices in connection herewith or in connection with the liabilities, obligations and duties guaranteed hereby, including notices of default by Tenant under the Agreement, and waives diligence, presentment, and suit in the part of Landlord in the enforcement of any liability, obligation or duty guaranteed hereby.

The undersigned further agrees that Landlord shall not be first required to enforce against Tenant or any other person, any liability, obligation, or duty guaranteed hereby before seeking enforcement thereof against the undersigned. Suit may be brought and maintained against the undersigned by Landlord to enforce any liability, obligation, or duty guaranteed hereby without joinder of Tenant or any other person. The liability of the undersigned shall not be affected by any indulgence, compromise, settlement, or variation of terms which may be extended to Tenant by landlord or agreed upon by Landlord and Tenant, and shall not be impaired, modified, changed, released, or limited in any manner whatsoever by any impairment, modification, change, release, or limitation of the liability of Tenant or its estate in bankruptcy, or of any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the United States Bankruptcy Code, or any similar law or statute of the United States or any state thereof. Landlord and Tenant, without notice to or consent by the undersigned, may at any time or times enter into such extensions, amendments, assignments, subleases, or other covenants respecting the Agreement as they may deem appropriate; and the undersigned shall not be released thereby, but shall continue to be fully liable for the payment and performance of all liabilities, obligations, and duties of Tenant under the Agreement as so extended, amended, assigned, or modified.

It is understood that other agreements similar to this Guaranty may, at Landlord's sole option and discretion, be executed by other persons with respect to the Agreement. This Guaranty shall be cumulative of any such agreements, and the liabilities and obligations of the undersigned hereunder shall in no event be affected or diminished by reason of such other agreements. Moreover, in the event Landlord obtains another signature of more than one guarantor on this Guaranty or by obtaining additional guaranty agreements, or both, the undersigned agrees that Landlord, in Landlord's sole discretion, may (i) bring suit against all guarantors of the Agreement jointly and severally or against any one or more of them, (ii)

 IS. 

## RIDER

- 16.6 TITLE WARRANTY As a material inducement to Tenant to execute this Agreement and to deliver the Security Deposit to Landlord, Landlord warrants and represents to Tenant that Landlord owns good and indefeasible fee simple title to the Leased Premises and the Personal Property subject to no liens or security interests, and Landlord further warrants and represents to Tenant that there are no encumbrances covering the Leased Premises which materially affect the use or operation of the Leased Premises. Within ten (10) business days after the date of execution of this Agreement, Landlord will provide a commitment for title insurance to Tenant from a reputable Title Company confirming that the statements contained in the preceding sentence are correct and if such statements are not correct, Tenant shall have the right to terminate this Agreement, in which event Landlord shall be obligated to fully refund the Security Deposit and any prepaid but unaccrued Rent to Tenant.

*at Tenant's expense*

- 16.7 MEMORANDUM  
OF CONTRACT

Concurrently with the execution of this Agreement, Landlord and Tenant shall execute the Memorandum of Contract attached hereto as Exhibit "G" and made a part hereof, which shall be recorded in the Real Property Records of Tarrant County, Texas.

compound or settle with any one or more of the guarantors for such consideration as Landlord may deem proper, (iii) release one or more of the guarantors from liability, and/or (iv) and the undersigned and all such other guarantors shall be jointly and severally liable to Landlord. The undersigned further agrees that no such action shall impair the rights of Landlord to enforce the Agreement against any remaining guarantor or guarantors, including the undersigned.

The undersigned agrees that if Landlord shall employ an attorney to present, enforce, or defend all of Landlord's right or remedies hereunder, the undersigned shall pay any reasonable attorney's fees incurred by Landlord in such connection, whether or not suit is actually filed.

This agreement shall be binding upon the undersigned and the successors, heirs, executors, and administrators of the undersigned, and shall inure to the benefit of Landlord and Landlord's heirs, executors, administrators, and assigns.

EXECUTED, this 4<sup>th</sup> day of July, 20 09, to be effective the same day as the effective day of the Agreement.

GUARANTOR(S): Jagjit Singh Mangat

Inderpreet Singh Sidhu

J. Mangat I. Sidhu

Address:

15151 FAA Blvd.  
Fort Worth, Texas 76155

B

## EXHIBIT "D"

### RULES AND REGULATIONS

1. Tenant shall not change locks or install additional locks on doors without prior written consent of landlord.
2. Tenant will refer all contractors, contractor's representatives and installation technicians rendering any service on or to the Leased Premises for Tenant to Landlord for Landlord's approval before performance of any contractual service. Tenant's contractors and installation technicians shall comply with Landlord's rules and regulations pertaining to construction and installation. This provision shall apply to all work performed on or about the Leased Premises or Property, including installation of telephones, telegraph equipment, electrical devices and attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings and equipment or any other physical portion of the Leased Premises or Property.
3. Tenant shall not, at any time, occupy any part of the Leased Premises as sleeping or lodging quarters.
4. [INTENTIONALLY LEFT BLANK]
5. Landlord will not be responsible for lost or stolen merchandise, trade fixtures, furniture, furnishings, personal property, equipment, money or jewelry from the Leased Premises regardless of whether such loss occurs when the area is locked against entry or not.
6. [INTENTIONALLY LEFT BLANK]
7. Employees of Landlord shall not receive or carry messages for or to any Tenant or other person or contract with or render free or paid services to any Tenant or to any of Tenant's agents, employees or invitees.
8. None of the parking, plaza recreation or lawn areas, entries, passages, doors, elevators, hallways or stairways, as applicable, shall be blocked or obstructed or any rubbish, litter, trash, or material of any nature placed, emptied or thrown into these areas or such area used by Tenant's agents, employees or invitees at any time for purposes inconsistent with their designation by Landlord.
9. The water closets and other water fixtures shall not be used for any purpose other than those for which they were constructed, and any damage resulting to them from misuse or by the defacing or injury of any part of the Property shall be borne by the person who shall occasion it. No person shall waste water by interfering with the faucets or otherwise.
10. [INTENTIONALLY LEFT BLANK]
11. [INTENTIONALLY LEFT BLANK]
12. [INTENTIONALLY LEFT BLANK]
13. [INTENTIONALLY LEFT BLANK]
14. [INTENTIONALLY LEFT BLANK]
15. [INTENTIONALLY LEFT BLANK]
16. [INTENTIONALLY LEFT BLANK]
17. [INTENTIONALLY LEFT BLANK]
18. If any governmental license or permit shall be required for the proper and lawful conduct of Tenant's business, Tenant, before occupying the Leased Premises, shall procure and maintain such license or permit and submit it for Landlord's inspection. Tenant shall at all times comply with the terms of any such license or permit.



IS



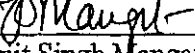


19. Except with the prior written consent of Landlord, Tenant shall not allow the Leased Premises to be used for manufacturing of any kind, or for any business activity other than that specifically provided for in Tenant's lease.
20. Tenant shall not install any radio or television antenna, loudspeaker or other device on the exterior walls of the Leased Premises without prior written consent of Landlord.
21. [INTENTIONALLY LEFT BLANK]
22. Tenant shall store all trash and garbage within the Leased Premises until daily removal of same by Tenant to such location in the Leased Premises as may be designated from time to time by Landlord. No material shall be placed in the Leased Premises trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the city in which the Leased Premises is located without being in violation of any law or ordinance governing such disposal.
23. [INTENTIONALLY LEFT BLANK]
24. ~~It is Landlord's desire to maintain in the Leased Premises the highest standard of dignity and good taste consistent with comfort and convenience for Tenant. Any action or condition not meeting this high standard should be reported directly to Landlord. Your cooperation will be mutually beneficial and sincerely appreciated.~~ Landlord reserves the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be necessary, for the safety, care and cleanliness of Leased Premises and for the preservation of good order therein.

Tenant hereby agrees to strictly comply with the foregoing Rules and Regulations.

TENANT:

Akoankar LLC

By:   
Jagjit Singh Mangat  
Managing Member

By:   
Inderpreet Singh Sidhu  
Managing Member

## EXHIBIT "E"

### NOTICE REGARDING AMERICANS WITH DISABILITIES ACT

The Leased Premises and the business which you may operate in or on it is subject to the Americans with Disabilities Act (ADA), which is a Federal civil rights law that prohibits the exclusion of people with disabilities from everyday activities. To meet the goals of the ADA, the law established requirements for private businesses of all sizes. These requirements first went into effect on January 26, 1992, and continue for both for-profit and non-profit organizations.

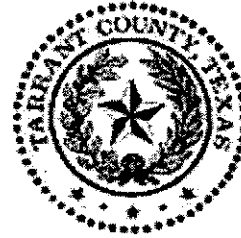
For small businesses, compliance with the ADA is required, but not necessarily difficult. The Department of Justice operates a toll-free ADA Information Line (800-514-0301 voice and 800-514-0383 TDD). In addition, tax credits and deductions have been established that can be used annually to offset many costs of providing access to people with disabilities.

Tenant shall at all times comply with any ADA requirements, and it shall be the sole duty of client to complete such compliance at Tenant's sole expense.

JERRY BERKOWITZ  
6300 RIDGLEA PL STE 504

FT WORTH TX 76116

Submitter: JERRY BERKOWITZ



---

SUZANNE HENDERSON  
TARRANT COUNTY CLERK  
TARRANT COUNTY COURTHOUSE  
100 WEST WEATHERFORD  
FORT WORTH, TX 76196-0401

**DO NOT DESTROY**  
**WARNING - THIS IS PART OF THE OFFICIAL RECORD.**

Filed For Registration: 07/09/2009 03:35 PM

Instrument #: D209183159

LSE 43 PGS

\$180.00

By: \_\_\_\_\_



**D209183159**

ANY PROVISION WHICH RESTRICTS THE SALE, RENTAL OR USE  
OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR  
RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

Printed by: MC